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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

P-5655/5 (102-488)

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on January 16, 2008

Signature _____

Typed or printed name Judomir A. Budzyn

Application Number

10/666,157

Filed

September 19, 2003

First Named Inventor

Kenneth W. Whitley

Art Unit

1797

Examiner

Bowers, Nathan Andrew

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

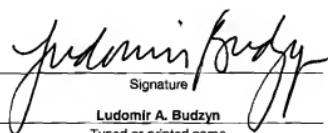
I am the

applicant/inventor.

assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

attorney or agent of record.

Registration number 40,540



Signature

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attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34

January 16, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

*Total of 1 forms are submitted

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Kenneth W. Whitley	Examiner:	Bowers, Nathan Andrew
Application No.:	10/666,157	Group Art Unit:	1797
Confirmation No.:	7091	Docket:	P-5655/5 (102-488)
Filed:	September 19, 2003	Dated:	January 16, 2008
For:	ROLLER BOTTLE		

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

STATEMENT IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

In support of the concurrently-filed Notice of Appeal and Pre-Appeal Brief Request for Review, please consider the patentability of the claims of the above-identified application in view of the following Remarks.

REMARKS

Reconsideration of the application is respectfully requested.

Claims 1, 4, 6-9, and 11 are in the application and have been finally rejected. Claims 15-20 have been withdrawn in view of a previous election.

Claims 1, 4, 8, 9 and 11 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Mussi (EP 0 614 967) in view of Land (U.S. Patent No. 3,630,849) and further in view of Weick et al. (U.S. Patent No. 5,908,127), and further in view of Kayal et al. (U.S. Patent No. 5,695,987). Claims 6 and 7, which depend from claim 1, stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Mussi in view of Land, further in view of

Applicant: Kenneth W. Whitley
Application No.: 10/666,157
Filing Date: September 19, 2003
Docket No.: P-5655/5 (102-488)
Page 2

Weick et al., further in view of Kayal et al. and further in view of Pedmo (U.S. Patent No. 6,585,123). This Statement focuses on claim 1, the only independent claim presently pending.

I. Mussi Provides Different Venting

Mussi is directed to a roller bottle assembly which includes a central concave portion 42 sized to partially accommodate the cap and neck portion of an adjacent bottle assembly. (P. 3, ll. 57-58). As noted by the Examiner, the planar surface therein is smooth. The Mussi roller bottle assembly also includes a cap 36 for mounting onto the assembly. (P. 3, ll. 48-51). As shown in the figures (e.g., Figs. 1 and 5), the cap 36 has a solid top portion which does not permit venting. As noted at p. 3, ll. 49-51, to permit venting, it is preferred that the cap 36 and the neck 32 of the bottle be threaded so that the cap 36 may be left partially opened to allow exchange of gases between the interior and exterior of the bottle assembly. There is no disclosure in Mussi to have gas transmitted through the top portion of the cap 36.

As discussed at para. [0007] of the subject application as published, vented caps tend to undesirably seal, and thereby prevent venting, with roller bottles arranged in a stacked relationship. Claim 1 overcomes the inadvertent sealing problem by specifying a combination of roller bottles and a cap with an open orifice. One of the roller bottles includes "at least one rib ... for defining a space between said open orifice of said cap and said planar surface", and "a gap" in "communication with said space, wherein said space permits gases to pass in and out of said open orifice of said cap." This arrangement can be seen in Figure 3 of the subject application.

Mussi does not utilize a vented cap. The Examiner asserted that it would have been obvious to provide a vented cap to Mussi. Regardless, Mussi provides a solution for inadvertent sealing by disclosing partial threading of the cap. Rather than seeking to define an air space, as set forth in the claims, Mussi provides a completely different solution, one of which involves venting between the threads of the neck of the container and the cap and out of the cap. Mussi

Applicant: Kenneth W. Whitley
Application No.: 10/666,157
Filing Date: September 19, 2003
Docket No.: P-5655/5 (102-488)
Page 3

would partially thread any cap. It is respectfully submitted that Mussi has not been properly applied in the present rejection.

II. Weick et al. Does Not Disclose Stacking

As set forth at p. 4 of the Office Action of October 16, 2007, the Examiner stated: "As evidenced by Weick, the construction of ribs along the base of a bottle to facilitate stacking is known in the art." The Examiner relied on this statement for allegedly supporting disclosure for modifying the Land reference to have ribs formed on the base of a bottle, rather than on a cap. However, Weick et al. is concerned with the strength and integrity of a container, not gas circulation about the base thereof in a stacked configuration. With reference to col. 4, ll. 26-52, Weick et al. discusses difficulties in stacking filled polymeric containers in packaged case form on pallets. The primary concern being that with additional pallets being placed one on top of another, the containers below may not have sufficient integrity to withstand the applied load. This concern is even greater where the containers have been hot-filled, meaning that the containers have been filled with hot juice or other liquid, thereby possibly softening or weakening the containers until the liquid is cooled. To add structural integrity to the containers, Weick et al. provides "oblong convex dimples 52 in combination with a central convex dimple 53 [to] assist in uniformly distributing stresses and strains, both during a hot-filling and cooling and during storage, transportation, display and use." (Col. 6, ll. 34-41).

There is absolutely no disclosure or suggestion in Weick et al. of having one container stacked directly atop a second container with the closure of the lower-stacked container being received in the recess of an upper-stacked container. Weick et al. does not show or discuss any closure for the containers. Without specifics of a closure, the recessed portion on the bottom of the Weick et al. containers cannot be designed to receive a closure of a lower stacked container. Moreover, use of the dimples in Weick et al. is completely different from the other applied references, namely, Mussi, Land and Kayal et al. As indicated above, it is the Examiner's position that in Weick et al., "the construction of ribs along the base of a bottle to facilitate

Applicant: Kenneth W. Whitley
Application No.: 10/666,157
Filing Date: September 19, 2003
Docket No.: P-5655/5 (102-488)
Page 4

stacking is known in the art.” However, the “stacking” referred to in Weick et al. is different from the stacking referred to in the claims of the subject application, as well as in the other applied prior art. Weick et al. is based on stacking in packaged case form, not one container on top of another container. (See, e.g., col. 4, l. 33, referring to “cases”).

In the Advisory Action of December 27, 2007, the Examiner further asserted that: “Weick is not relied on for teachings regarding direct stacking of bottles. Weick is simply relied on for teachings regarding rib configuration.” It is completely unclear how the dimples of Weick et al. are to be applied to Mussi or Land to accommodate a cap or closure. It is respectfully submitted that Weick et al. is not properly applied in the present rejection.

III. Weick et al. is Not Analogous Art

It is further respectfully submitted that Weick et al. is nonanalogous prior art. Applicant raised this argument in a previous response. As set forth at p. 7 in the Office Action of October 16, 2007, in response to Applicant’s previous argument, the Examiner stated, “The Mussi, Land and Weick references disclose analogous art because each reference is directed to a stackable receptacle designed to retain a fluid.” In the December 27, 2007 Advisory Action, the Examiner stated, “Weick is analogous art because it is directed to the design of a plastic bottle.”

The inventor, herein, as set forth in the “Field of the Invention” section of the subject specification, was concerned with providing “a roller bottle having a recessed portion at its bottom end for accommodating an adjacently stacked roller bottle in a manner which allows gases to enter a gas-permeable cap of the stacked bottles.” As discussed at para. [0007] of the application as published, vented caps tend to undesirably seal with roller bottles arranged in a stacked relationship. The sealing prevents gas flow in and out of the roller bottles.

As indicated above, Weick et al. is directed to a load bearing polymeric container. Its use and purpose is completely different and far from the invention of the subject application.

As indicated above, the Examiner asserted that Weick et al. is analogous as being directed to a “stackable receptacle designed to retain a fluid”, or as a “plastic bottle”. These are

Applicant: Kenneth W. Whitley
Application No.: 10/666,157
Filing Date: September 19, 2003
Docket No.: P-5655/5 (102-488)
Page 5

broad definitions of a field of endeavor. As indicated by the Board, “[p]recise definition of the problem [confronting an inventor] is important in determining whether a reference is from a nonanalogous art. Defining the problem too narrowly may result in excluding consideration of relevant prior art. Of the same token, defining the problem too broadly, as done here, may result in considering prior art as ‘analogous’ which is inconsistent with real world considerations.” *Ex parte Dussaud*, 7 U.S.P.Q.2d 1818, 1819 (B.P.A.I. 1988) (citation omitted). The present claims are in the field of roller bottle design. With a specific problem of inadvertent sealing of vented caps for cell culture roller bottles, one skilled in the art would not look to Weick et al. For all the reasons stated above, it is respectfully submitted that Weick et al. is not analogous art and can not be properly relied upon in formulating any rejection herein.

IV. Conclusion

Favorable action is earnestly solicited. If there are any questions or if additional information is required, the Examiner is respectfully requested to contact Applicant’s attorney at the number listed below.

Respectfully submitted,

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